

Committee of Thirteen Report

June 12, 2007

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, June 12, 2007 at 5:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

13 JPs Present: Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Moore, Schindler, Stephenson, Summers, Winscott, Wolf, Wozniak

Others Present: Sheriff Keith Ferguson, County Attorney Robin Green, Captain Hunter Petray, Richard McComas, Travis Harp, Dennis Cottrell

Media: Jennifer Turner – Daily Record, Scarlet Simms – Morning News

Chair Tim Summers called the meeting to order.

PUBLIC COMMENTS:

Don Day stated that something is coming down that reminds him of the phrase “I’m from the government and I’m here to help you”, and you remember that famous incident in New Orleans. He said he has just reviewed some correspondence that he considers to be threatening to the county from FEMA, a Federal organization infamous for mismanagement and wasting taxpayer money. He said they have threatened suspension from participation in the National Flood Insurance Program, and other prohibitions if Benton County does not enact their regulations and Flood Damage Prevention Code and an ordinance providing for their program. He said they have even furnished a boilerplate ordinance that contains an emergency clause to make sure you do their will by September 28, 2007. He said the clause implies that serious injury, death, or substantial destruction of property is likely to occur if this is not enacted immediately. He said he does not have a problem with FEMA doing mapping and attempting to identify flood-prone areas as an aid to communities much as USGS provides topographic maps, but now they want to make you their regulators by dictating rules that would essentially deny any use of floodplain areas regardless of common sense. He said they know that these floodplain elevations are somewhat arbitrary to begin with, which is why they have a disclaimer of liability which is inserted in the proposed ordinance, yet they specify elevations for buildings that are twice as high as what is presently required by the county or cities within the county. He cited Section 5 of the proposed ordinance which is entitled “Methods of Reducing Flood Losses”, and said it would essentially eliminate losses by denying any kind of construction, and even the Corps of Engineers would be hard pressed to comply with unnatural diversion of flood waters. He asked the Committee to carefully review all of the details of these requirements before signing off on them.

NEW BUSINESS:

1. Ordinance Request: Establishing Volunteer Fire Department Boundaries for the Purpose of Fire Protection Services for the Avoca Volunteer Fire Department

JP Glass made motion to forward the ordinance request to the June 28, 2007 Quorum Court meeting for consideration, seconded by JP Stephenson. JP Glass stated that the date for the election has been clarified so the ordinance is now ready to go forward to the Quorum Court. Motion passed by unanimous show of hands vote.

2. Ordinance Request: Calling Special Election for the Purpose of Levying Dues for the Avoca Volunteer Fire Department

JP Glass made motion to forward the ordinance request to the June 28, 2007 Quorum Court meeting for consideration, seconded by JP Harrison. JP Summers asked if this election would include the city of Avoca. Captain Tony Miltich stated that state law does not allow for incorporated areas to be included in elections for the levying of dues, so the Fire Department will continue to collect dues from city residents in the manner they have used previously. Motion passed by unanimous show of hands vote.

3. Resolution Request: Waiver of Personnel Policy to Hire Appraiser Level IV at Midpoint of Salary Range – Assessor Bill Moutray

Assessor Bill Moutray stated that he wishes to hire a state-certified Appraiser – Level IV with 20 years experience. He said that the waiver will put him at the current market value. JP Stephenson stated that this was approved unanimously by the Personnel Committee. JP Stephenson made motion to forward the Resolution request to the June 28, 2007 Quorum Court meeting for consideration, seconded by JP Moore. Motion passed by unanimous show of hands vote.

4. Approval of Purchase of Shredder for County Judge's Office

County Judge Gary Black stated that he is not trying to justify the cost of the shredder due to the amount of money previously spent on shredding, but he said that no one has taken the time to go through the jail storage area to determine what needs to be thrown away so over the years the materials have piled up. He said that there are quite a few outdated records in Springdale that need to be brought up here so they can be sorted at our own pace and destroyed if they are not needed. He said that using an outside source for shredding does not allow that because the records have to be kept secured and stored until the shredding service can come and get them. He said they would like to allow citizens to use the shredder one Saturday a month to discard of sensitive materials.

JP Moore made motion to approve the purchase and include it in the 2007 Budget Adjustment Ordinance, seconded by JP Harrison. JP Glass asked if some of the downtown businesses might be interested in using the shredder for a fee, which could be used to offset the maintenance costs, which might be significant. County Judge Gary Black stated there might be a problem with the legality of charging a fee to the for-profit businesses, and said that there is a 10-year warranty on the cutting blades, which is what tends to wear out. JP Glass asked if the various county departments are going to contribute to the maintenance costs since they will all be using it. Comptroller Richard McComas stated all maintenance costs are charged to Department 23, Non-

departmental which comes out of County General anyway. Motion passed by unanimous show of hands vote.

5. Ordinance Request: Add \$5.00 Fee to Tickets in Benton County

JP Hobbs made motion to forward the ordinance request to the June 28, 2007 Quorum Court meeting for consideration, seconded by JP Stephenson. JP Hobbs stated that Sheriff Ferguson has estimated that if the fine had been enacted in 2006 the county would have received \$176,170. Motion passed by unanimous show of hands vote.

County Attorney Robin Green stated that the \$20.00 fee that was previously mentioned by Sheriff Ferguson is a fee which will be included in court costs and will not require any action by the Quorum Court.

6. Resolution Request: Expressing the Desire for Benton County to Comply With Act 157 of 2007

JP Schindler made motion to forward the Resolution request to the June 28, 2007 Quorum Court meeting for consideration, seconded by JP Winscott. JP Schindler stated that the Arkansas Legislature passed Act 157 during its most recent session, which prohibits state agencies from contracting with businesses which employ illegal immigrants. JP Summers asked what effect this would have on the workload of the county staff. JP Schindler stated there would be no additional work; it merely puts the county on public record as being in compliance with Act 157. JP Stephenson asked what the ultimate benefit to the citizens of Benton County will be. JP Schindler stated that the U.S. Attorney and Border Patrol officials say that the availability of jobs is creating the problem, and if that source is cut off, there will be fewer illegal immigrants crossing the borders. He said that government agencies need to take a stand and say that they are going to comply with the law, and they are asking all cities, school boards, and any other entities that spend taxpayer money to join them. He said that not only are businesses who are bidding against companies that employ illegal immigrants at a disadvantage due to the cheaper labor costs, but is unfair to those that are employed illegally, because they do not get the wages or benefits they deserve. JP Stephenson said he had difficulty grasping how this would be a benefit to Benton County. JP Wolf stated that she would be more comfortable if the Resolution stated that they would not “knowingly” do business with anyone employing illegal immigrants, and said that it still seems to need some method of enforcement.

JP Hubbard stated that it was a nice statement and that he appreciated it, but subcontractors check for valid drivers licenses, and that is all they can do. JP Schindler stated that enforcement would be in the form of an ordinance, and that is not what they are trying to achieve. He said they are only saying that if they discover that someone is employing illegal immigrants, Benton County will no longer do business with them. JP Hobbs stated that the resolution states that our intent is to not do business with anyone employing illegal immigrants, so she does not think that the phrase “not knowingly” needs to be added.

Motion failed — 5 votes in favor (Hobbs, Schindler, Summers, Winscott, Wolf), 8 votes opposed (Brown, Glass, Harrison, Hill, Hubbard, Moore, Stephenson, Wozniak)

7. Resolution Request: Authorizing the County Judge to Enter Litigation Against Manufacturers of Ephedrine

County Attorney Robin Green introduced a Resolution and accompanying contract authorizing Benton County to join with 16 counties that are suing the manufacturers of the drugs ephedrine and pseudoephedrine, because they continue to sell the product in Mexico to the degree that its only possible use is for the manufacturing of methamphetamine. She said that it is estimated that 100 tons are needed for medicinal purposes in Mexico, and they are selling 224 tons in Mexico. She said the purpose of the lawsuit is for counties to recover some of the costs incurred in dealing with the methamphetamine problem, and there will be no cost to the county.

Robin Green stated that she has contacted the county's risk management attorney, Duncan & Rainwater, and Mike Rainwater has sent her a statement saying that he agrees with the Arkansas Attorney General's opinion that the lawsuit has merit based on the legal theory of unjust enrichment. She explained it is similar to knowingly providing a gun for someone to use in the commission of a crime, even though it is not illegal to own a gun. She said the pharmaceutical companies have continued to sell the product in Mexico knowing that its only possible use is in the manufacturing of an illegal substance.

JP Wolf made motion to forward the Resolution request to the June 28, 2007 Quorum Court meeting, seconded by JP Hill.

JP Summers stated that in addition to the possible dollars that the county will receive, he favors putting the companies on notice that they need to be more responsible about the products they sell.

JP Stephenson asked how common it is for the attorney to be given the discretion to agree to a settlement amount, because he thought that was the plaintiff's decision. Robin Green stated that in this case the law firm is taking on the suit at no cost to the counties, will only be paid if they win, and will receive 33% of the award. She said she anticipates that the counties will be consulted, and though the practice is not common, this is a reputable law firm.

JP Hill stated that he could not get past the feeling that they are opening the door for some attorney to go after Smith & Wesson because they manufactured a gun that was used in a crime. County Attorney Robin Green stated that it is not illegal to own a gun, and this lawsuit is more similar to those filed against tobacco companies for damages. She noted that this is the only lawsuit of its kind in the country, but there are other counties looking into it, and those who are first to take action will receive the first portion of any settlement.

JP Glass stated that he agreed with JP Hill, and that a reputable drug company made a reputable product, which people now have to sign for in order to purchase it, and just because someone came up with an illegal use for it, they should not face a lawsuit. Robin Green stated that the new restrictions on the purchase of ephedrine in the United States were not initiated by the drug companies; they came about because various state legislatures recognized the epidemic of methamphetamine use and chose to attempt to limit the supply. She said as the former Prosecuting Attorney, she would estimate that 70% to 80% of all property crime in Benton County can be directly traced to drug use, as well as almost all violent crimes. She said the lawsuit is based on the theory of unjust enrichment, and while the United States has regulations in place, no such regulations exist in Mexico, and the drug companies know that the amount of ephedrine they are exporting far exceeds what is needed for medicinal purposes. She said it comes back to the principle that along with liberty comes responsibility, and she agrees with the Attorney General opinion that this is a viable lawsuit, and there could be hundreds of thousands of dollars awarded to help offset the cost of fighting the methamphetamine epidemic. JP Glass

stated that next we will be going after battery manufacturers because lithium batteries are also used in the making of methamphetamine, and then what else. He suggested that they recoup the money through the forfeiture of properties owned by drug dealers, and the county can then sell that property. Robin Green stated that Benton County aggressively pursues the seizure of assets of drug dealers, which are then used in the fight against drugs until they lose their effectiveness because they become known. JP Glass asked about the real estate. Robin Green stated that she was not aware of any real estate that they have been able to convert, because real estate usually has a mortgage or lien on it which makes it unprofitable.

JP Moore asked if they would be having this argument if an explosives manufacturer was selling explosives in a neighboring country that had no regulations on them, and terrorists were purchasing them to bomb the United States. He said that meth is the drug version of a suicide bomber, so he is in favor of anything they can do to cut down on the supply of ingredients.

JP Hobbs stated that she dislikes lawsuits, however whether Benton County joins this one or not, it is going forward, and to miss out on the opportunity to participate would be wrong, and if anything at all can be done to slow down the amount of drugs coming into our country, they need to support it.

JP Harrison stated that the Resolution does not tell manufacturers that they cannot produce the drug, but they will be held responsible for the ripple effects. He said coming from a background of working for a company that manufactures these drugs, he knows that they ship their excesses and surpluses out of the country and it is unnecessary. JP Winscott stated that he does not see anything in the Resolution which states what the county's share will be if the lawsuit is successful. Robin Green stated that after attorneys' fees the money will be divided in proportion to the costs that the counties have incurred in fighting methamphetamine, which could possibly include the cost of the Drug Interdiction team.

Motion passed by unanimous show of hands vote.

OTHER BUSINESS:

JP Wozniak stated that the Environmental Committee has sent the proposed nuisance abatement ordinance to the County Attorney to incorporate the changes that she suggested, which will not be significant enough to require another public hearing, so after the Environmental Committee reviews the final changes it will come straight to the Committee of 13.

JP Hubbard made motion to change the meeting time of the Committee of 13 to 6:00 p.m., or 5:30, and to add an additional 15 minute period of public comments at the end of the meeting, and to place the proposal on the next Quorum Court agenda, seconded by JP Hobbs. JP Hubbard stated that when this was discussed earlier, he did not really understand the difference between the Committee of 13 and the Quorum Court meetings, but it has now been brought out that the Committee of 13 is more of a working committee, and they are getting a lot of new stuff introduced to them that is not on the agenda, like the item he is now bringing up. He said that public comment at the end of the meeting be suited for the Committee of 13, where it would not be for the Quorum Court. He said so far they have not gotten into anything lengthy, but if they did he thought that 15 minutes would limit it. He said he believed a 6:00 p.m. start time would help more people attend the meetings, and although so far he has not seen a big turnout, they are getting more and more people all of the time with some of the things that are coming up.

JP Summers asked if JP Hubbard would like to divide the question, and vote on the two issues separately. JP Hubbard said no.

Motion passed – 7 votes in favor (Brown, Glass, Hubbard, Hobbs, Moore, Winscott, and Wolf), 6 votes against (Harrison, Hill, Schindler, Stephenson, Summers, Wozniak).

ANNOUNCEMENTS:

JP Stephenson announced that the Personnel Committee will meet on Monday, June 18, 2007 at 3:00 p.m. to discuss new personnel requests, and the Juvenile Detention Center Ad Hoc Committee will meet Thursday, June 28, 2007 at 3:00 p.m.

JP Moore announced that the Long Range Planning/Properties and Equipment Committee will meet on Tuesday, June 19, 2007 at 5:00 p.m. to tour the current Election Commission facility, and will convene in the Quorum Court room for their regular meeting at 5:30 p.m.

JP Hobbs announced that she has an appointment with the Director of the Drug and Rehabilitation Program in Decatur on June 15, 2007 at 2:00 p.m. if anyone would like to join her and tour the facility.

After motion and second the meeting was adjourned at 6:15 p.m.